

# State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER  
Chair

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Director and General Counsel

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February 23, 2012

Honorable Members, Wisconsin State Senate  
Honorable Members, Wisconsin Assembly  
Wisconsin State Legislature  
Wisconsin State Capitol  
Madison, WI 53707

Dear State Senators and Representatives:

The Government Accountability Board would like to provide you with a summary of the Board's recall petition review process, so that you may address any questions your constituents may have, and so that you may have confidence in the work of your state agency overseeing election administration.

## **What is the G.A.B. doing to review recall petition signatures?**

As with nomination papers, we conduct a careful review of each petition page. At least two G.A.B. staff members review each recall petition line to ensure that there is a signature, a legible street address and a complete date within the time period allowed for petition circulation. For Senate recall petitions, staff also ensures that the municipality listed by the signer is within the legislative district.

The Board has employed more than 50 temporary employees to assist Board staff with this line-by-line review of all currently filed recall petitions. Many signatures will be reviewed three to five times by the time a certification of sufficiency or insufficiency is issued by the Board. Detailed analysis and reports documenting this comprehensive staff review will be prepared for the Board's consideration at a public meeting. In addition, the Board staff will review challenges and responses provided by the officeholder subject to the recall and the recall committee respectively. The officeholders and recall committees will also have the opportunity to address the Board at the public meeting.

## **Is the Board looking for duplicate signatures?**

Yes, the Statutes currently do not prohibit individuals from signing a petition multiple times, but require that the second and any subsequent signatures be stricken. Our past practice, in keeping with longstanding law, was that finding and challenging duplicates is the responsibility of the officeholders, as is specifically prescribed by statute. In January, the Waukesha County Circuit Court directed the Board to take its own reasonable steps to identify duplicate and fraudulent names on petitions seeking to recall the Governor. The Board has extended this process to all current recall efforts, including the petitions filed against the Lieutenant Governor and four incumbent Senators. This search for and review of duplicate names goes

beyond statutory and administrative code requirements, and will cost taxpayers more than \$75,000.

### **How does the Board handle names on a petition that may be fictitious?**

The Board will strike names that appear to be fictitious if they appear fraudulent or do not appear on the State's list of registered voters or on the White Pages website. The Board will also investigate any names that are challenged as potentially fictitious by an officeholder. The Board affirmed this practice well in advance of the filing of any of the current recall petitions. However, the Board must take care in striking unusual names. For instance, there is one registered voter in our voter database whose name is Mickey Mouse, and an internet search brings up at least two dozen individuals in Wisconsin who apparently use that name.

### **Why can't the G.A.B. do more to verify names?**

Some observers have argued that the G.A.B. should actively investigate and verify all names on petitions even when they are not challenged by an officeholder. There are two reasons why this is not done. One is the cost and lack of sufficient personnel. The Board does not have the budget or the staff to put such an effort on the shoulders of taxpayers, particularly in the short timeframe for the Board's review of the recall petitions that is provided by Statutes. The second reason is that the Statutes that govern the Board provide that the Board "shall determine by careful examination whether the petition *on its face* is sufficient." §9.10 (3) (b), Wis. Stats. Wisconsin law presumes that the information contained on recall petitions is valid, the same presumption applied to information on nomination papers filed by every candidate for public office. §§ GAB 2.05(4), 2.09(1), Wis. Adm. Code.

### **Why won't the Board accept challenges from third parties and individuals?**

Unlike the nomination paper review process where the law permits anyone to file challenges of signatures, Wisconsin Statutes only authorize challenges by the officeholder subject to a recall. The Board is obligated to follow these statutes that have been in place for decades. We appreciate that recent events in Wisconsin have inspired more citizens on all sides of the political spectrum to become involved in the process. However, the law has not caught up with the public's greater desire to participate in recall petition review, or the new technology that would make it possible. Wisconsin Statutes §9.10 (2) (f) and (g) and (3), provide that the Board may only accept a verified challenge to a signature and that it is the "officer against whom the petition is filed" who may file such a challenge.

Some have argued that because any eligible voter may sign a recall petition, anyone should be able to challenge a signature, particularly if it is their own signature that was fraudulently signed by someone else. However, the statutes allow only a recall committee to file petitions, and allow only the officeholder to file challenges. The remedy for those who disagree with these laws is to convince the Legislature to change it, not to ask the G.A.B. to ignore the Statutes.

The statutes create a due process procedure that gives the petitioner a right to file a written rebuttal to a challenge and gives the officer a right to file a reply. Just as a third party may not appear in court and participate as a party to a trial, a third party may not simply file its own information with the Board at a contested hearing between the petitioners and the officeholders. A third party may make such information public, for the officer to review and

give to the Board, or provide such information to an officer as an in-kind campaign contribution if permitted to do so by campaign finance laws. The Board has advised individuals who find possible problems with petitions to contact the officeholder's committee directly with that information so that challenges may be properly made.

**Does this mean the Board will not investigate recall petition fraud?**

No. The Board has joint jurisdiction with district attorneys to investigate election fraud, including destruction or falsification of recall petitions, which are punishable as felonies. If we receive information raising a reasonable suspicion that election fraud has occurred, the Board may investigate the matter. Pursuant to Wisconsin Statutes §§5.05(5s) and 12.13(5), investigations of election fraud are confidential, except for specific records as prescribed by statute. Only district attorneys may prosecute election fraud.

Please contact me with any questions or concerns you may have.

Sincerely,

**Wisconsin Government Accountability Board**

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy  
Director and General Counsel

cc: The Honorable Scott Walker, Governor  
Members, Government Accountability Board  
Members, Government Accountability Board Staff  
Jeff Renk, Assistant Chief Clerk, Wisconsin State Senate  
Patrick Fuller, Chief Clerk, Wisconsin State Assembly  
Terry C. Anderson, Director, Wisconsin Legislative Council